

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
ALBUQUERQUE, COUNTY OF BERNALILLO AND THE ALBUQUERQUE-
BERNALILLO WATER UTILITY AUTHORITY REGARDING ADOPTION OF CITY
WATER AND WASTEWATER UTILITY POLICIES AND PROCEDURES**

This Memorandum of Understanding ("MOU") is entered into on the 21st day of January 2004 by and between the City of Albuquerque ("City"), the County of Bernalillo ("County"), and the Albuquerque-Bernalillo Water Utility Authority ("Authority"). Individually, the City, County and Authority may be referred to as a "Party" and collectively as the "Parties" in this MOU.

WHEREAS, New Mexico Senate Bill 887 (Laws 2003, Chapter 437, codified as NMSA 1978, § 72-1-10) created the Albuquerque-Bernalillo Water Utility Authority, effective June 21, 2003;

WHEREAS, the Authority is a "joint agency of the two governments [City and County] and is subject to the state Procurement Code and other applicable state laws." NMSA 1978, § 72-1-10 (2003);

WHEREAS, the Authority is charged with "administer[ing] the water and wastewater utility of Albuquerque and Bernalillo county." NMSA 1978, § 72-1-10 (2003);

WHEREAS, the legislation creating the Authority requires that "[a]ll functions, appropriations, money, records, equipment and other real and personal property pertaining to the Albuquerque water and wastewater utility shall be transferred to the Albuquerque-Bernalillo water utility authority." NMSA 1978, § 72-1-10 (2003);

WHEREAS, the New Mexico Legislature also provided for the Authority to issue revenue bonds to refund City bonds pledged by property taxes and that all contractual obligations of the utility under City ownership and management would be binding on the Authority. NMSA 1978, § 72-1-10 (2003);

WHEREAS, the legislation creating the Authority requires the New Mexico Public Regulation Commission to audit the utility prior to transfer of the money, assets and debt of the Albuquerque water and wastewater utility, NMSA 1978, § 72-1-10 (2003); this audit is not yet completed, but this MOU anticipates the completion of the audit and the transfer of the utility to the Authority;

WHEREAS, the City and County are entering into a JPA under the New Mexico Joint Powers Agreements Act, NMSA 1978, §§ 11-1-1 to 11-1-7 (1999), with the intent to supplement the Authority's power to issue revenue bonds with the common powers of the City and County, so that longer term needs of the utility for capital outlay and other expansions of the utility may be met;

WHEREAS, the Authority anticipates it will promulgate regulations governing the issuance of its revenue bonds in coming weeks and that the regulations will also address financial management of bonds or other obligations issued by the Authority under the JPA;

WHEREAS, the Authority is in the process of developing an administrative and operating structure for the utility;

WHEREAS, the Authority is also in the process of developing comprehensive policies and procedures regarding all aspects of the functioning of the utility;

WHEREAS, because the assets, money and debt of the utility have yet to transfer to the Authority, the utility continues to be managed and operated in accordance with all existing and binding contracts and codified and uncodified policies and procedures of the City;

WHEREAS, the City, County and Authority agree that transition planning is necessary to facilitate the transition and that plan should include the Authority's consideration of current policies and procedures in developing the Authority's policies and procedures, temporarily adopting certain current policies and procedures, and inclusion of the Authority on fiscal and other management matters prior to transfer;

IT IS AGREED between the City, County and Authority that:

1. Definitions.

a. System. The public utility designated as the City's water system and sanitary sewer system, as required to be transferred to the Authority in accordance with NMSA 1978, § 72-1-10 (2003), and consisting of all properties, real personal, mixed or otherwise, now owned or hereafter acquired by the City, County or Authority through purchase, construction or otherwise, including all extensions, enlargements and improvements of or to the water and sanitary sewer system and used in connection with or relating to, and any other related activity or enterprise of the City, County or Authority designated by the City, County or Authority as part of the water and sanitary sewer system, wherever situated.

b. Gross revenues. All income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the City from the System and from the sale and use of water, water services or facilities, sewer service or facilities or any other service, commodity or facility or any combination thereof furnished to the inhabitants of the City and County by means of the System. Such term also includes:

- (1) All income derived from the investment of any such money including surplus net revenues,
- (2) Money released from any rebate programs, and
- (3) Property insurance proceeds that are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the System.

c. Net revenues. The gross revenues after deducting operation and maintenance expenses.

d. Operation and maintenance expenses. All reasonable and necessary current expenses of the System, paid or accrued, related to operating, maintaining and repairing the System, including, without limiting the generality of the foregoing:

(1) Legal and overhead expenses of the various operating units directly related and reasonably allocable to the administration of the System,

(2) Insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded,

(3) Premiums, expenses and other costs for credit facilities,

(4) All expenses other than expenses paid from the proceeds of bonds and other similar indebtedness payable solely or primarily from net revenues of the System,

(5) Costs of audits of the books and accounts of the System,

(6) Amounts required to make rebate payments to the United States Government that relate to the System,

(7) Salaries, administrative expenses, labor costs, surety bonds and the cost of materials and supplies used for or in connection with the current operation of the System. Operation and maintenance expenses do not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by the City as a result of their negligence or other misconduct in the operation of the System or any charges for the accumulation of reserves for capital replacements.

2. City Documentation of Contracts, Policies and Procedures. No later than thirty days from the execution of this MOU or prior to transfer of the System to the Authority, whichever is earlier, the City will provide to the Authority copies of all contracts, including leases, pertaining to the management, operation and maintenance of the System and copies of all policies and procedures that apply to the System. Any policy or procedure not provided pursuant to that paragraph will not be considered by the Authority in its development of its own policies and procedures, unless it is provided to the Authority in accordance with Section 6 of this MOU.

3. Authority's Assumption of City Contracts. Upon transfer of the System to the Authority, the System will continue to be managed and operated in accordance with existing contracts. The Authority recognizes it will be successor in interest on such contracts.

4. Authority's Temporary Adoption of City Policies and Procedures. Upon transfer of the System to the Authority, if the Authority has not implemented its own policies and procedures, the System will continue to be managed and operated in accordance with the City's codified and uncodified, written and duly adopted, policies and procedures pertaining to rates, water resource management, personnel and the physical operation and maintenance of the system, except as expressly noted in Section 5, in effect as of May 1, 2003, until the implementation date of the Authority's own policies and procedures. The policies and procedures to be adopted include:

- rates,
- conservation, including rebate programs,
- water resource management and development,
- water and wastewater system planning, including line extension policies, except as identified below,
- water quality,
- water and wastewater system performance,
- utility easement and right-of-way agreements,

- street excavation,
- permitting,
- risk management and safety,
- customer service,
- personnel and benefits, with express recognition that City employees shall remain employees of the City in accordance with the terms of this MOU,
- personnel, training and certification,
- procurement,
- construction,
- budgeting, including Capital Improvement Program monies,
- all plant operating procedures and system maintenance,
- any and all emergency and emergency response plans.

5. Excepted Policies and Procedures. Policies and procedures excepted from the temporary adoption of City policies and procedures in Section 4 include:

- a. Capital Needs Considerations. Capital needs considerations for the System will be determined by the Authority. Funding of capital needs will be provided, in whole or in part, by the Authority, through its statutory power or its power created by the JOINT POWERS AGREEMENT BETWEEN THE CITY OF ALBUQUERQUE AND COUNTY OF BERNALILLO REGARDING ALBUQUERQUE-BERNALILLO WATER UTILITY AUTHORITY passed by the Authority on December 17, 2003.
- b. Policies and procedures executed or adopted by the City after May 1, 2003.
- c. Policy No. 14.A.2, of Policy No. 14 Lines Outside the City Limits (City of Albuquerque Enactment Nos. 20-1984 and No. 88-1992) and any other policy or procedure making a distinction between within and without the City limits.

6. Personnel Matters. The City and Authority agree to develop a plan and schedule for transfer of personnel from the City to the Authority. If this plan is not completed prior to transfer, the Authority will contract with the City for personnel to staff the utility.

7. Process for Consideration of Other Policies or Procedures. The City, County or Authority, or any authorized representative of the City, County or Authority may propose for Authority consideration for temporary adoption any policy or procedure either 1) not recognized in or 2) modified from those identified in Sections 4 and 5 of this agreement. Such proposals may also be made for consideration by the Authority in its development of its own policies and procedures in conjunction with the policies and procedures provided under Section 2 of this agreement; provided, however, proposals must be presented within 30 days of execution of this MOU.

8. Temporary Fiscal Management of the System. Prior to transfer of the System to the Authority, the City will:

- a. Report issues associated with management and operation of the System to the Authority and abide by decisions of the Authority regarding those issues. The City will seek City

Council or other City approval for deviations from standard procedure only with Authority endorsement.

b. Prepare monthly reports of the System's gross revenues, operating and maintenance expenses and net revenues.

c. Prepare monthly reports of the System's major projects, both planned and in progress, and including cost projections.

d. Prepare monthly financial reports showing receipts, expenditures and balances for each account or fund associated with any bond issuance or other obligation related to the System.

e. The City will assume the following fiscal responsibilities:

(1) Maintain fiscal records for the System separate from the City's in accordance with generally accepted accounting procedures,

System,

(2) Provide strict accountability of all receipts and disbursement for the thereto,

(3) Pay all bond payments and other obligations and expenses related in accordance with applicable laws.

f. Work with the Authority in addressing any personnel issues.

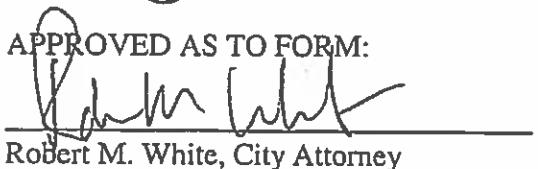
9. Term. The term of this MOU shall be the earlier of six months from the date of execution of the last Party signing this agreement, or upon transfer of the System. This MOU may be extended by mutual agreement of all the Parties hereto.

IN WITNESS WHEREOF, each Party has executed this agreement on the date first written above.

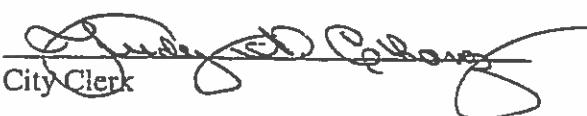
CITY OF ALBUQUERQUE

By: 
Jay Czar, Chief Administrative Officer Date: 12/15/03

APPROVED AS TO FORM:


Robert M. White, City Attorney

ATTEST:


City Clerk

(seal)

COUNTY OF BERNALILLO
BOARD OF COUNTY COMMISSIONERS

N/A
Tom Rutherford, Chair

N/A
Alan B. Armijo, Vice Chair

N/A
Steve D. Gallegos, Member

N/A
E. Tim Cummins, Member

N/A
Michael Brasher, Member

APPROVED AS TO FORM:

Tito Chavez
Tito Chavez, County Attorney

ATTEST:

N/A
Mary Herrera, County Clerk

(seal)

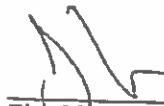
ALBUQUERQUE-BERNALILLO WATER UTILITY AUTHORITY

By: Martin Chavez
Martin Chavez, Chairman

Date: 12/19/03

ATTEST:

Nann M. Houlston
Nann M. Houlston,
Interim Chief-of-Staff


1/21/04
Thaddeus Lucero, County Manager